FILED
SEP 29 1952

IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 306 "A"

G. D. BATEN, *Petitioner and Appellant Below*

v.

NONA-FLETCHER MINERAL COMPANY, *Respondent and Appellee Below*

On Petition for a Writ of Certiorari to the United States Court of Appeals For the Fifth Circuit

BRIEF FOR THE RESPONDENT IN OPPOSITION

WILL E. ORGAIN,
ORGAIN, BELL & TUCKER,
First Federal Savings Building,
Beaumont, Texas,
Attorneys for Respondent

ALDINE LAW PRINT CO., HOUSTON

SUBJECT INDEX

	PAGE
OPINION BELOW	1
JURISDICTION	1
QUESTIONS PRESENTED	2
STATEMENT	2
ARGUMENT	3
AUTHORITIES	4
CONCLUSION	5

INDEX OF AUTHORITIES

Forsythe v. Hammond, 166 U.S. 506, 514; 17 Sup. Ct. 665; 41 L. Ed. 1095	4
Hamilton Brown Shoe Co. v. Wolf Bros. & Co., 240 U.S. 251; 36 Sup. Ct. 269; 60 L. Ed. 629	4
Houston Oil Co. of Texas, et al., v. Goodrich, et al., 245 U.S. 440; 38 Sup. Ct. 140; 62 L. Ed. 385	4
Layne & Bowler Corporation v. Western Well Works, Inc., et al., 261 U.S. 387, 393; 43 Sup. Ct. 422; 67 L. Ed. 712	4
Magnum Import Co. v. Coty, 262 U.S. 159, 163; 43 Sup. Ct. 531; 67 L. Ed. 922	4
Southern Power Co. v. North Carolina Public Service Co., et al., 263 U.S. 508; 44 Sup. Ct. 164; 68 L. Ed. 413	4
United States v. Johnston, 268 U.S. 220; 45 Sup. Ct. 496; 69 L. Ed. 925	4
United States v. Daniel J. Rimer, 220 U.S. 547; 31 Sup. Ct. 596; 55 L. Ed. 578	4
Cyclopedia of Federal Procedure, 2nd ed., Vol. II, Sec. 5414, pages 55-56	4
Moore's Commentary on the U. S. Judicial Code (1949), p. 584	4
Robertson & Kirkham on Jurisdiction of the Supreme Court of the United States (1951), Sec. 310, p. 588	4
Stern & Gressman on Supreme Court Practice (1950), p. 112	4
Address of Chief Justice Hughes before the American Law Institute, 20 A.B.A.J., p. 341	4
Address of Chief Justice Taft, 35 Yale L.J., p. 240	4
Article by Justice Felix Frankfurter, 48 Harvard Law Review, p. 238	5
Article by Henry M. Hart, Jr., 53 Harvard Law Review, p. 595	5

IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No._____"A"

G. D. BATEN, *Petitioner and Appellant Below*

v.

NONA-FLETCHER MINERAL COMPANY,
Respondent and Appellee Below

On Petition for a Writ of Certiorari to the United States Court of Appeals For the Fifth Circuit

---

BRIEF FOR THE RESPONDENT IN OPPOSITION

Opinion Below

The opinion of the Court of Appeals is as yet unreported.

Jurisdiction

The judgment of the Court of Appeals was entered upon the 18th day of July, 1952 (R. 78). The Petition for Writ of Certiorari was filed on August 29, 1952. Notice of filing

was served upon Respondent September 5, 1952. Although not stated, it is assumed that jurisdiction of this Court is invoked under Title 28, U. S. C. A., Par. 1254.

Questions Presented

Whether or not the Circuit Court was in error in its holding that the relief sought and prayed for, being the cancellation of two deeds, would, if granted, injuriously affect the rights of the grantees in said deeds, therefore indispensable parties, none of whom were parties to the suit and who, if made parties, would destroy diversity and with it the sole ground for Federal jurisdiction of the suit in the District Court.

Statement

The Circuit Court opinion accurately states Appellant's pleading. The Circuit Court, after stating the nature of the suit and appellant's pleadings (R. 74) succinctly states the issue and the holding involved. It is there said:

> "A fair appraisal of the pleadings leaves us in no doubt that the real purpose of this suit is to cancel and set aside the conveyances above mentioned which appellant Baten, a stockholder in appellee, and appellants Bowers and Gordon, appellee's former attorneys, regard as ultra vires and executed without adequate consideration, thus unlawfully dissipating appellee's assets, impairing Baten's rights as a stockholder, and leaving Bowers and Gordon nothing out of which to recover their attorney's fees. The whole matter boils down to an internecine struggle within the appellee corporation. The request appearing only in the body of the complaint to fix the status of Bowers and Gordon, and to determine the value of their services, is apparently intended to establish for them a status

which would entitle them to seek a cancel-ation of the deeds. Without these allegations they could have no standing as plaintiffs. There is no prayer for a money recovery of attorney's fees.

"The primary relief sought—cancel-ation of the deeds—will, if granted, directly and injuriously affect the rights of the grantees in said deeds. These grantees are therefore indispensable parties, as the trial court held. Shields v. Barrow, 58 U.S. (17 How.) 129, 15 L. Ed. 158; Garzot v. Rios de Rubio, 209 U.S. 283, 52 L. Ed. 794; Calcote v. Texas Pac. Coal and Oil Co. (CA-5), 157 Fed. (2) 216; 167 A.L.R. 413, cert. den. 329 U.S. 782, 91 L. Ed. 671, rehearing denied, 329 U.S. 830, 91 L. Ed. 704; Vincent Oil Co. v. Gulf Refining Co. (CA-5), 195 Fed. 434; Keegan v. Humble Oil and Ref. Co. (CA-5), 155 Fed. (2) 971; Lawrence v. Sun Oil Co. (CA-5), 166 Fed. (2) 466.

"The grantees in both deeds are citizens of Texas, as are also the plaintiffs below. Their joinder will therefore destroy diversity and with it the sole ground for federal jurisdiction of this suit. In these circumstances the suit was properly dismissed for lack of indispensable parties." (R. 76-77)

Argument

The gravamen of Petitioner's complaint seems to be that the action was brought "to annul two ultra vires acts",—the acts of the corporation in executing two deeds of conveyance to land, and "was not a suit to cancel deeds to land," as was held by the Circuit Court. Such is the stated reason for allowance of the writ. There is nothing here involved except the construction of a pleading.

It is plain, both from the Petition for Writ of Certiorari and the Opinion of the Circuit Court that the decision of the court does not involve principles the application of which is of wide public or governmental interest. The mat-

ters involve a question of concern only to the immediate parties. The petition does not present a proper case of jurisdiction for this court to grant writ of certiorari to the Circuit Court of Appeals. The judgment of the Circuit Court is correct and is not in conflict with any other decision so as to warrant further review of the case by this court.

Authorities

Layne & Bowler Corporation v. Western Well Works, Inc., et al., 261 U.S. 387, 393; 43 Sup. Ct. 422; 67 L. Ed., 712;

Magnum Import Co. v. Coty, 262 U.S. 159, 163, 43 Sup. Ct. 531; 67 L. Ed. 922;

Forsyth v. Hammond, 166 U.S. 506, 514; 17 Sup. Ct. 665; 41 L. Ed. 1095;

United States v. Johnston, 268 U.S. 220; 45 Sup. Ct. 496; 69 L. Ed. 925;

United States v. Daniel J. Rimer, 220 U.S. 547; 31 Sup. Ct. 596; 55 L. Ed. 578;

Houston Oil Co. of Texas, et al., v. Goodrich, et al., 245 U.S. 440; 38 Sup. Ct. 140; 62 L. Ed. 385;

Southern Power Co. v. North Carolina Public Service Co., et al., 263 U.S. 508; 44 Sup. Ct. 164; 68 L. Ed. 413;

Hamilton Brown Shoe Co. v. Wolf Bros. & Co., 240 U.S. 251; 36 Sup. Ct., 269; 60 L. Ed. 629;

Robertson & Kirkham on Jurisdiction of the Supreme Court of the United States (1951), Sec. 310, p. 588;

Stern & Gressman on Supreme Court Practice (1950), p. 112;

Moore's Commentary on the U. S. Judicial Code (1949), p. 584;

Cyclopedia of Federal Procedure, 2nd ed., Vol. II, Sec. 5414, pages 55-56;

Address of Chief Justice Hughes before the American Law Institute, 20 A.B.A.J., p. 341;

Address of Chief Justice Taft, 35 Yale L.J., p. 240;

Article by Justice Felix Frankfurter, 48 Harvard Law Review, p. 238;
Article by Henry M. Hart, Jr., 53 Harvard Law Review, p. 595.

Conclusion

The Petition for Writ of Certiorari should be denied.

Respectfully sumitted,

WILL E. ORGAIN,
ORGAIN, BELL & TUCKER,
First Federal Savings Building,
Beaumont, Texas,
Attorneys for Respondent

Copy of this brief was on this the_____day of September, 1952, mailed to G. D. Baten, Petitioner.